

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshall
United States Courthouse, 40 Foley Square, in the City of
New York, on the 2nd day of April, two thousand eighteen.

PRESENT:

DENNIS JACOBS,
PETER W. HALL,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

JIANXING LI-SHANG,

Petitioner,

v.

JEFFERSON B. SESSIONS III,
UNITED STATES ATTORNEY GENERAL,

Respondent.

16-3851
NAC

FOR PETITIONER: Thomas V. Massucci, New York, NY.

FOR RESPONDENT: Chad A. Readler, Acting Assistant

1 Attorney General; Daniel E.
2 Goldman, Senior Litigation
3 Counsel; Lindsay C. Dunn, Trial
4 Attorney, Office of Immigration
5 Litigation, United States
6 Department of Justice, Washington,
7 DC.

8
9 UPON DUE CONSIDERATION of this petition for review of a
10 Board of Immigration Appeals ("BIA") decision, it is hereby
11 ORDERED, ADJUDGED, AND DECREED that the petition for review
12 is DENIED.

13 Petitioner Jianxing Li-Shang, a native and citizen of
14 the People's Republic of China, seeks review of an October
15 24, 2016, decision of the BIA affirming a March 15, 2016,
16 decision of an Immigration Judge ("IJ") denying him asylum,
17 withholding of removal, and relief under the Convention
18 Against Torture ("CAT"). *In re Jianxing Li-Shang*, No. A205
19 647 594 (B.I.A. Oct. 24, 2016), *aff'g* No. A205 647 594 (Immig.
20 Ct. N.Y.C. Mar. 15, 2016). We assume the parties'
21 familiarity with the underlying facts and procedural history
22 in this case, in which Li-Shang applied for relief based on
23 his claims that he was beaten for opposing China's family
24 planning policy and that he fears persecution as a Christian.

25 Under the circumstances of this case, we review the IJ's
26 decision as modified by the BIA. *See Xue Hong Yang v. U.S.*

1 *Dep't of Justice*, 426 F.3d 520, 522 (2d Cir. 2005). We review
2 the agency's factual findings under the substantial evidence
3 standard. See 8 U.S.C. § 1252(b)(4)(B); *Chuilu Liu v.*
4 *Holder*, 575 F.3d 193, 196 (2d Cir. 2009); see also *Diop v.*
5 *Lynch*, 807 F.3d 70, 75 (4th Cir. 2015) ("The IJ's factual
6 finding of competency is reviewed under the substantial
7 evidence standard").

8 The agency did not err in finding Li-Shang competent to
9 proceed with his removal hearing without additional
10 safeguards. "[T]he test for determining whether an alien is
11 competent to participate in immigration proceedings is
12 whether he or she has a rational and factual understanding of
13 the nature and object of the proceedings, can consult with
14 the attorney or representative if there is one, and has a
15 reasonable opportunity to examine and present evidence and
16 cross-examine witnesses." *Matter of M-A-M-*, 25 I. & N. Dec.
17 474, 479 (B.I.A. 2011). To determine competency, an IJ may
18 ask questions regarding "the nature of the proceedings, . . .
19 the respondent's state of mind[,] [and] . . . whether he or
20 she currently takes or has taken medication to treat a mental
21 illness," or the IJ may continue proceedings to permit an
22 evaluation. *Id.* at 480-81.

1 Here, the IJ engaged in the appropriate inquiry after
2 Li-Shang's attorney alleged that Li-Shang had memory issues
3 and anxiety, and the IJ reasonably concluded that Li-Shang
4 was competent. As the IJ found, Li-Shang provided responsive
5 answers about the nature of the proceedings, how he entered
6 the United States, and who the IJ was in the proceedings.
7 Furthermore, Li-Shang was able to detail his medical issues
8 from polio and admitted that he had experienced stress and
9 nervousness only when detained at the border and when
10 appearing before the IJ. He also admitted that he was able
11 to hold two jobs. Given Li-Shang's responsiveness, lack of
12 relevant medical history, and ability to work, the IJ did not
13 err in finding him competent. *Id.* at 479-81.

14 Li-Shang's additional competency challenges fail. He
15 argues that he was unresponsive and suffered memory lapses
16 throughout his hearing. However, the record reveals that Li-
17 Shang understood the questions posed but tried to avoid
18 admitting facts damaging to his claims. Li-Shang had no
19 difficulty remembering specific dates, such as his birthday,
20 his wedding anniversary, and the birthdates of two of his
21 children, and his memory lapsed only when he was asked for
22 dates relevant to his family planning claim.

1 We do not review the agency's determination that Li-Shang
2 failed to satisfy his burden of proof with adequate
3 corroboration because Li-Shang abandons any challenge to
4 those findings, relying solely on his competency argument to
5 excuse his failure to satisfy his burden. *See Yueqing Zhang*
6 *v. Gonzales*, 426 F.3d 540, 541 n.1, 545 n.7 (2d Cir. 2005)
7 (considering claim abandoned because petitioner did not argue
8 it in his appellate brief).

9 For the foregoing reasons, the petition for review is
10 DENIED. As we have completed our review, any stay of removal
11 that the Court previously granted in this petition is VACATED,
12 and any pending motion for a stay of removal in this petition
13 is DISMISSED as moot. Any pending request for oral argument
14 in this petition is DENIED in accordance with Federal Rule of
15 Appellate Procedure 34(a)(2) and Second Circuit Local Rule
16 34.1(b).

17 FOR THE COURT:
18 Catherine O'Hagan Wolfe, Clerk of Court